

DECISION AND ORDER

Decision Issue Date Tuesday, March 06, 2018

PROCEEDING COMMENCED UNDER subsection 45(12), subsection (45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant(s): 20286430 ONTARIO LIMITED

Applicant: BRITTON CLARKSON PLANNING LIMITED

Property Address/Description: 2793 BATHURST ST

Committee of Adjustment Case File Number: 17 176902 NNY 16 MV

TLAB Case File Number: **17 227810 S45 16 TLAB**

Hearing date: Friday, February 09, 2018

DECISION DELIVERED BY L. McPherson

INTRODUCTION AND BACKGROUND

This is an appeal to the Toronto Local Appeal Body (the “TLAB”) by the owner (“Applicant”) of the decision of the Committee of Adjustment (“Committee”) for the City of Toronto (“City”) to approve certain minor variances and refuse certain minor variances related to the construction of a two-storey office addition above an existing ground level commercial/retail space at 2793 Bathurst Street (“the subject property”). The proposed addition would be contained within the existing building footprint.

The subject property is located at the northeast corner of Glencairn Avenue and Bathurst Street. It has a lot area of 235 m², a lot frontage of approximately 8.85 m along Bathurst Street and a lot depth of approximately 26.9 m. A one-storey building currently exists on the subject property of approximately 228 m² in size. This building is currently used as a jewelry shop and café. The existing building has been generally built to the property lines with the exception of the southeast corner of the property where an accessible access ramp is located.

The subject property is designated Mixed-Use Area in the City of Toronto Official Plan (“the Official Plan”) and is zoned CR 1.0 (c1.0; r1.0) SS2 (x2620) in the new City wide Zoning By-law (new City By-law) and C1 in the former North York Zoning By-law 7625 (“former By-law”). The requested variances are as follows:

1. Chapter 20.5.10.1 By-law No. 569-2013

The minimum number of parking spaces required is three (3).

The proposed number of parking spaced provided is zero (0).

2. Chapter 40.10.40.40. By-law No. 569-2013

The maximum permitted floor space index is 1.00 times the lot area.

The proposed floor space index is 2.53 times the lot area.

3. Chapter 230.5.10.1 By-law No. 569-2013

The minimum number of Short Term Bicycle parking spaces required is three (3).

The proposed number of Short Term Bicycle parking spaces is zero (0).

4. Chapter 40.10.50.10. By-law No. 569-2013

If a lot in the CR zone abuts a lot in the Residential Zone category or Residential Apartment Zone category, a minimum 1.50m wide strip of land used only for soft landscaping must be provided along the part of the lot line abutting the lot in the Residential Zone category or Residential Apartment Zone category.

A landscape strip has not been provided along the east lot line (0.00m).

5. Section 23.2.1, By-law No. 7625

The maximum permitted lot coverage is 33.30% of the lot area.

The existing lot coverage is 94% of the lot area.

6. Section 22.10.0, By-law No. 7625

The maximum permitted gross floor area is 1.00 times the lot area.

The proposed gross floor area is 2.53 times the lot area.

7. Section 6A(16)(a), By-law No. 7625

The minimum required number of loading spaces is one (1).

The proposed number of loading spaces is zero (0).

8. Section 6A(2)(a), By-law No. 7625

The minimum required number of parking spaces is eight (8).

The proposed number of parking spaces is zero (0).

9. Section 23.2.2, By-law No. 7625

The minimum required rear yard setback is 7.50m.

The existing and proposed rear yard setback is 0.00m.

10. Section 23.2.2, By-law No. 7625

The minimum required side yard setback is 4.50m.

The existing and proposed east side yard setback is 0.00m.

The Committee approved variances 2, 3, 4, 5, 6, 9 and 10 on Condition, but refused variances 1, 7 and 8 dealing with parking and loading.

There were two Participants who filed Participant Statements however only one Participant, Shaarei Shomayim Congregation, appeared at the hearing.

MATTERS IN ISSUE

The Committee approved the majority of variances related to the 2 –storey addition to the existing building and was therefore satisfied that those variances met the four tests of the Planning Act. The Committee did not approve the variances related to parking and loading. Since the application is to add a second storey to an existing building that is constructed over the majority of the site (94%), it would not be possible to move forward with the approved variances in the absence of the parking and loading variances. The key issue is whether the parking and loading related variances meet the four tests in order for the other approvals to be acceptable and implemented.

JURISDICTION

Provincial Policy – S. 3

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

Minor Variance – S. 45(1)

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

The Applicant called two expert witnesses. Mr. Jim Kinrade was qualified to give expert evidence in the field of transportation planning. Mr. Dave McKay was qualified to give expert evidence in the field of land use planning (Exhibit 1 – Consolidated Evidence).

The subject lands are located in the former City of North York in the Bedford Park - Nortown neighbourhood. They are part of an older main street commercial area running along both sides of Bathurst Street, beginning just south of Glencairn Avenue to Glengrove Avenue. There are some mid-rise, mixed use projects that have developed on the west side of Bathurst Street. The east side of Bathurst Street consists of 2-storey commercial buildings. The surrounding neighbourhood consists primarily of 2-storey single detached dwellings. The Shaarei Shomayim Synagogue is to the east of the subject property and the Bialik Hebrew Day School is to the south and west of the subject property.

Mr. Kinrade prepared a Parking Demand Study. He reviewed his study approach with City Transportation Services staff and noted that Transportation Services staff did not identify any issues with the proposed variances. Mr. Kinrade advised that the City's Zoning Examiner determined that parking spaces are only required for the new/additional space proposed as the existing retail space is legal non-conforming and legal non-compliant. Under the new City By-law, 3 parking spaces would be required and under the former By-law, 8 parking spaces would be required. Similarly, the Zoning Examiner determined that 1 loading space would be required under the former By-law. No loading space would be required under the new City By-law.

Mr. Kinrade advised that both staff and City Council have consistently supported and favoured the parking standards contained in the new City By-law as the standards are based on more recent and comprehensive studies undertaken by the IBI Group and reflect the City's direction in reducing reliance on automobiles in favour of other, multi-modal transportation options. In the case of general office sites, parking supply and peak occupancy data was collected at 216 locations across Toronto, including many in suburban and inner-suburban environments. In Mr. Kinrade's professional opinion, the parking space requirement under the new City By-law is the appropriate standard that should be applied rather than the standard under the former By-law.

With respect to loading, the new City By-law does not require a loading space for small scale retail uses under 500 m² as the frequency of loading tends to be low for such uses and such a space would occupy an unreasonable proportion of the ground floor area. In Mr. Kinrade's professional opinion, the loading space requirement of the new City By-law should be applied as it reflects the City's current intention for loading spaces for small commercial uses.

Mr. Kinrade indicated that the subject property is extremely well served by public transit as follows:

- The Glencairn TTC subway station is approximately 1 kilometre from the subject lands which equates to a 10-15 minute walk. It can be reached by foot or bicycle along Glencairn Avenue.
- The #14 Glencairn TTC bus route has stops at the northwest and southwest corners of the Bathurst/Glencairn intersection. The TTC website lists a travel time of 2 minutes to the Glencairn Station and 9 minutes to the Davisville Station at Yonge Street from these stations. This route operates 7 days a week from 5 am to midnight.
- The #7 Bathurst Toronto Transit Commission (TTC) route operates 24 Hours/day, 7 days a week. It travels from Steeles Avenue south to the Bathurst Subway Station. The southbound stop is located immediately to the west (directly across Bathurst Street) and the northbound stop is located immediately to the south (directly across Glencairn Avenue).
- The route is part of the TTC's "10 Minute Network", and operates at "a frequency of 10 minutes or better, all day, every day."
- The #307 Bathurst "Blue Light" TTC route operates in the overnight period when it supplements the #7 Bathurst bus. The route is generally the same as the #7 TTC route except that it runs to the Exhibition Loop instead of terminating at Bathurst TTC Station (Bloor St. West).

Mr. Kinrade noted that the parking rates contained in the new City By-law are based on the general availability and frequency of transit service. However, in his opinion, where higher order transit and higher frequency of service is provided, significantly lower parking requirements are justified. In his professional opinion, the subject property has exceptional bus service with direct access to both the Yonge and Spadina Subways.

Mr. Kinrade advised that the Bathurst Street frontage north of the subject property is home to approximately 14-15 different commercial and institutional uses with no on-street parking to service those uses and there did not appear to be any associated issues with parking violations. Based on his observations during weekdays, many of the patrons of the existing store appeared to travel to the establishment on foot. A few patrons parked in the adjacent parking lot or the parking lot attached to the synagogue. In the evenings, the number of patrons parking in the adjacent medical centre lot increased (as opposed to the synagogue lot.)

The Parking Demand Study (May 2, 2017) prepared by his firm concluded that although property constraints preclude the provision of on-site parking, the nearby subway service and superior bus service – with direct links to both the Yonge and Spadina subway lines – provide attractive alternatives to automobile reliance.

Further, Mr. Kinrade advised that the existing on-street parking and stopping regulations ensure that the community will be adequately protected from unauthorized parking and loading activities. He advised that during various site visits, no on-street parking violations were observed during the day or evening.

Mr. David McKay provided expert land use planning evidence on behalf of the Applicant. He explained the proposal to construct a 406.8 m², two-storey office addition above the existing ground level commercial / retail space. The proposed addition would be contained within the existing building footprint. Post-addition, the building would have a total gross floor area of 629.4 m².

He noted that a number of developments are proposed in the area including a 10-storey mixed use building on the adjoining lots to the north (2795,2799 and 2801 Bathurst Street) which has been appealed to the Ontario Municipal Board. A 12-storey mixed use building is proposed on the lands at the southeast corner of Bathurst and Glencairn Avenue which is the subject of an Ontario Municipal Board hearing.

Mr. McKay advised that the subject property was designated Mixed-Use in the Official Plan and identified as being on an Avenue. The Mixed Use Area designation is intended to promote a broad range of uses, including commercial and residential uses, all contained within single use or mixed use buildings of varying heights and scale. The Avenues designation is intended to encourage gradual intensification by promoting new development on a building-by-building basis and improving the pedestrian environment, the look of the street, shopping opportunities and transit services. In addition, growth along the Avenues designation is intended to be supported by high quality transit services, combined with urban design and traffic engineering practices that promote a street that is safe, comfortable and attractive to pedestrians.

Section 2.2.1 of the Official Plan speaks to the gradual redevelopment and intensification along Avenues. More specifically, Mr. McKay referred to Policy 2.2.1.3. (c) which states :

“development in Mixed Use Areas on an Avenue...will support and promote the use of transit; contribute to the creation of a range of housing options in the community; contribute to an attractive, safe and comfortable pedestrian environment that encourages walking and strengthens local retailing; provide universal physical access to all publicly accessible spaces and buildings; conserve heritage properties; be served by adequate parks, community services, water and sewers, and transportation facilities; be encouraged to incorporate environmentally sustainable building design and construction practice...”

In Mr. McKay's opinion, the proposed variances conform to the Mixed Use designation and will provide for additional office and retail space at an appropriate height and density that is proximate to transit services.

Mr. McKay advised that development within Mixed Use Areas is to be respectful of the existing neighbourhood context and is to reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas. Development is to “fit harmoniously” within its existing and planned context as noted in the Urban Design Policies of the Official Plan (3.1.2). Effectively, new development is to be compatible

with its existing and planned context. In his opinion, compatible does not mean the same as or even similar to. It means development which can co-exist in harmony and will not cause unacceptable adverse impacts of a planning nature.

In Mr. McKay's opinion, the proposal meets the relevant urban design policies - specifically:

- 12.8.1. As a corner lot, the variances will allow the proposed structure to have a greater presence along both adjacent street frontages and will have the main entrance at an appropriate location along Bathurst Street (Policy 3.1.2.1 a and b);
- 12.8.2. Respects the massing and street proportions of the neighbourhood (Policy 3.1.2.3 a);
- 12.8.3. Has a scale, proportion and the use of appropriate materials which are appropriate in character and appearance for the neighbourhood (Policy 3.1.2.3 b);
- 12.8.4. Provides for adequate light, privacy and adequately limits shadow impacts (Policy 3.1.2.3 d and e).

Furthermore, Mr. McKay noted that Policy 4.5.2 provides direction for development in Mixed Use Areas. The relevant sections are below:

"In Mixed Use Areas development will:

- a) create a balance of high quality commercial, residential, institutional and open space uses that reduces automobile dependency and meets the needs of the local community;
- b) provide for new jobs and homes for Toronto's growing population on underutilized lands in the Downtown, the Central Waterfront, Centres, Avenues and other lands designated Mixed Use Areas, creating and sustaining well-paid, stable, safe and fulfilling employment opportunities for all Torontonians;
- d) locate and mass new buildings so as to adequately limit shadow impacts on adjacent Neighbourhoods, particularly during the spring and fall equinoxes;
- e) locate and mass new buildings to frame the edges of streets and parks with good proportion and maintain sunlight and comfortable wind conditions for pedestrians on adjacent streets, parks and open spaces;
- f) provide an attractive, comfortable and safe pedestrian environment
- h) take advantage of nearby transit services;
- i) provide good site access and circulation and an adequate supply of parking for residents and visitors;

In his opinion, the variances support (a) and (b) by allowing for a modest intensification of the subject lands and the provision of office space in an area well served by public transit. The proposed development will occur at an appropriate scale which causes no undue shadow impacts on adjacent Neighbourhoods (d). The proposed development conforms to (e) and (f) by locating the massing of the building along the street edge in an appropriately designed manner as to maintain sunlight and comfortable pedestrian conditions. The variances support the use of transit service by providing additional office

floor space at an appropriate, transit supportive density, in proximity to both frequent bus services and rapid transit (h). With respect to (i), there is no ability to provide parking on site given the existing building on-site which is to be retained. However, in Mr. McKay's opinion, the reduction in the provision of parking is modest, particularly in light of the new City By-law requirements. As supported in Mr. Kinrade's witness statement, the new City By-law represents Council's latest thinking on parking requirements and is therefore a more appropriate standard against which the proposal should be evaluated.

Mr. McKay agreed with Mr. Kinrade that both staff and City Council have consistently supported and used the parking standards contained in the new City By-law as they are based on more recent and comprehensive studies and reflect the City's direction in reducing reliance on automobiles in favour of other, multi-modal transportation measures.

The provision of excellent and proximate transit service in this area specifically will result in less reliance on automobile traffic for users of the office space, including both employees and visitors.

In Mr. McKay's opinion, the proposed variances will provide for a modest intensification of the existing building that is contextually appropriate, compatible with the existing built form of the neighbourhood and will take advantage of nearby transit service and meet the general intent and purpose of the Official Plan.

Mr. McKay advised that the variances dealing with a reduction/elimination in the provision of on-site parking are required as no space is physically available on the subject lands to provide for parking. It is his opinion that the provision of excellent transit service in this area will result in less reliance on automobile traffic for patrons of the office uses. He noted that the existing businesses have limited or no on-site parking and continue to operate successfully.

With regard to the loading space, Mr. McKay noted that the variance is only required from the former By-law. Based on existing site conditions, a loading space cannot be accommodated on the subject lands and if required, would prohibit the construction of any suitable structure.

In Mr. McKay's opinion the requested reduction in parking and loading requirements maintains the intent and purpose of the Zoning By-laws.

With respect to the variances for floor space index ("fsi"), Mr. McKay indicated that the general intent and purpose of a maximum floor space index is, along with other zoning provisions, to maintain a scale and massing of development that is consistent with the neighbourhood, so as to not allow for one development to overpower or dominate adjacent properties. Typical main street areas in the City have fsi's ranging from 2.5 to 5.0. In his opinion, the increase in density is modest and in line with a main street

condition and appropriate for the Avenue designation. He noted that the proposed addition is appropriately massed in relation to the existing conditions as well as in relation to the proposed redevelopment plans for the properties to the immediate north. It is his opinion that the requested increase in fsi maintains the intent and purpose of the Zoning By-laws.

With respect to the variance to reduce the bicycle parking requirement, it is Mr. McKay's interpretation that this variance would not be required based on his reading of 230.5.10.1(3) as the floor space would be less than 2,000 m²; however, out of an abundance of caution, the Applicant is still requesting the variance. He indicated that the subject property is build out and there is no ability to provide for such spaces. He noted there is room for bicycle parking to be installed along the public right of ways. Further, there is the ability to provide for bicycle parking in the basement. In his opinion, the general intent and purpose of the zoning by-law is being maintained.

The variances for lot coverage, setbacks and landscape strips reflect the existing legal non-complying status of the existing building placement on the subject property as the ground floor takes up the majority of the lands. Mr. McKay advised that approval of these variances would recognize, maintain and extend legal compliant status to these performance standards.

Mr. McKay opined that reinvestment in the neighbourhood in close proximity to transit is appropriate and desirable for the City, the neighbourhood and the subject property. Given the geometry and size of the subject property, the variances are desirable in order to ensure that the subject property can be developed with an appropriate amount of density and employment uses to suit the current planned function for the lands within an Avenue.

In Mr. McKay's opinion, the variances are minor. Collectively, they are reflective of the existing condition of the subject property and the surrounding area. The variances do not create any undue adverse impact on the streetscape or surrounding properties. The variances dealing with the legal non-complying matters do not create any impact that does not already exist. The variance for additional fsi appears large given the size of the site; however, the actual amount of additional gfa is relatively small.

In Mr. McKay's opinion, there will be no undue impact and the variances will allow for reinvestment and gradual intensification in a manner compatible with adjacent properties and the surrounding community and be in keeping with the main street character of this portion of Bathurst Street. The reduction in parking of 3 spaces, in his view, is not significant in the larger area context.

In conclusion, it is Mr. McKay's opinion that all the variances represent good planning, are in the public interest and should be approved.

Mr. Brian Howard Cantor is the president of the Shaarei Shomayim Congregation which

owns and occupies the synagogue property municipally known as 470 Glencairn Avenue, two parcels east of the subject property. The synagogue has been on the property for approximately 50 years and has 700 family members and operates a catering facility and a school.

The Congregation recognizes that several new developments are being proposed in the vicinity of its property; Mr. Cantor noted that they are not opposed to redevelopment in principle. Their concern relates to the safe and viable operation of their driveway to and from Glencairn Avenue for both vehicles and pedestrians. The Congregation is of the view that the subject property should be developed as part of a comprehensive project with a determination of the overall parking and loading requirements. In Mr. Cantor's opinion, the application is premature until a more thorough study has been completed taking into consideration the other development sites in the area. He noted that the other parking opportunities in the area that were identified would be gone when the sites are redeveloped. He is concerned that there will be no parking available for the proposed additional space as there is not a lot of parking in the area. He has noted illegally parked vehicles in the area. He indicated that there would be a safety concern if loading is taken from Bathurst Street because of the change of grade causing visibility issues.

Mr. Cantor noted that the Applicant has an informal arrangement with the synagogue for parking; however, there is no commitment for the arrangement to continue and there is concern that the parking will not be accessible with the new developments taking place. The synagogue parking is periodically full and the members go to other available parking which will be gone when the developments take place. The congregation would like to see the traffic/parking issue in the area dealt with on a comprehensive basis.

In conclusion, Mr. Cantor reiterated that the congregation is not opposed to development in the area but it does not want an intolerable traffic and parking situation. If the application were approved, he would like the TLAB to consider requiring the Applicant to enter into a parking lease agreement.

ANALYSIS, FINDINGS, REASONS

The Committee of Adjustment made an unusual decision whereby it approved certain variances to permit the proposed 2-storey addition to the existing building while refusing the parking variances that would be required to build the addition, as it would not be possible to provide parking on the subject property. I have considered the evidence of the Applicant and the concerns of the Participant. I accept the uncontroverted evidence of the Applicant's expert witnesses in transportation and land use planning.

With respect to the variances dealing with the legal non-complying matters, including setback, coverage and landscaping, I agree with Mr. McKay that there is little to no impact arising from the variances to recognize an existing situation.

The subject property is situated along an Avenue and within a Mixed Use Area designation. As noted by Mr. McKay, the subject property is surrounded on all sides by other Mixed Use Area designations and does not abut any Neighbourhoods designations. I agree that the subject property is appropriate for intensification. The proposed development is minor in the overall planned context of the area and the key issue is whether the parking variance resulting from the additional gross floor area meets the 4 tests of the Planning Act.

I agree with both Mr. Kinrade and Mr. McKay that the appropriate standard to use for evaluating the parking and loading variances is the new City By-law. I concur with the evidence that considerable study was undertaken to formulate contemporary standards and accept the evidence that they are supported staff and Council. The issue is whether providing relief for 3 parking spaces is going to have any undue adverse impact on the area and on the Participant's property.

I understand Mr. Cantor's concern with the amount of development taking place in the immediate vicinity of the subject property and the impact that such development may have on traffic and parking related to the synagogue. As noted, both of the development applications noted are currently in various stages of consideration. I agree that they are large projects that could have an impact on traffic and parking; however, those applications are being considered on their own merits and in another forum. I do not agree that the relief of 3 parking spaces will have a significant impact on the traffic or parking within the overall context of the area and the other applications.

Mr. Kinrade noted that where higher order transit and higher frequency of service is provided, lower parking requirements are justified. I agree with the professional opinion provided that the subject property has excellent bus service with direct access to both the Yonge and Spadina subways. This will assist in mitigating the parking deficiency of 3 spaces.

I find that the proposed development is minor and incremental. A number of the variances relate to the existing condition. The proposal results in an appropriate and desirable development for subject property and the variances are considered minor in the context. I have had regard for the decision of the Committee and independently satisfied myself that the variances, individually and cumulatively, are appropriate in the circumstances and within the scope of the relevant statutory considerations.

I am satisfied that the requested variances meet the criteria set out in Section 45(1) of the Planning Act. The general purpose and intent of the Official Plan and Zoning By-laws is maintained. In addition, I am satisfied that the variances are desirable and are consistent with the Provincial Policy Statement and conform to the Growth Plan.

DECISION AND ORDER

The appeal is allowed and the variances to Zoning By-laws 569-2013 and 7625 as proposed and listed below are authorized.

1. Chapter 20.5.10.1 By-law No. 569-2013

The minimum number of parking spaces required is three (3).
The proposed number of parking spaced provided is zero (0).

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A landscape strip has not been provided along the east lot line (0.00m).

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The existing and proposed rear yard setback is 0.00m.

10. Section 23.2.2, By-law No. 7625

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The existing and proposed east side yard setback is 0.00m.

X 

Laurie McPherson
Panel Chair, Toronto Local Appeal Body